

(2001) 08 AP CK 0125

In the Andhra Pradesh High Court

Case No : Writ Petition No. 34295 of 1998

Fishermen Co-operative Society, Bibinagar village and
Mandal, Nalgonda Dist.

APPELLANT

Vs

A.P. Pollution Control Board, Hyd. and others

RESPONDENT

Date of Decision : 23-08-2001

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21

Constitution of India, 1950 — Article 14, 226, 32

Criminal Procedure Code, 1973 (CrPC) — Section 133

Environment (Protection) Act, 1986 — Section 25, 3(1), 3(2), 6

Environment (Protection) Rules, 1986 — Rule 3(3A)

Water (Prevention and Control of Pollution) Act, 1974 — Section 25

Citation : (2001) 5 ALD 755 : (2001) 6 ALT 162

Hon'ble Judges : S.B. Sinha, C.J.;V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. R. Subash Reddy, for the Appellant; Government Pleader, for H and Fisheries, Mr. E. Kalyan Ram, Mr. B. Narayana Reddy, Mr. Akella Srinivasa Reddy, Mr. A. Ramakrishna Reddy, Mr. R. Raghunandan Rao, Mr. P. Nageswara Sree and Mr. V. Ravinder Rao, for the Respondent

Judgement

V.V.S. Rao, J.—The petitioner, a functional Co-operative Society of Fishermen (for short "the Society"), registered under the provisions of the A.P. Co-operative Societies Act, 1964 (for short "the Act"), has filed this writ petition complaining that respondent Nos.1 and 2, namely, A.P. Pollution Control Board and the Environmental Engineer, are allowing respondent Nos.7 to 14 to run their industries, located in Kondamadugu village, Bibinagar Mandal, Nalgonda District, without proper checks and balances, with regard to the discharge of untreated effluents into Pedda Cheruvu Tank, resulting in loss of fish wealth due to pollution. The Society, therefore, prays for damages amount to Rs.20,00,000/- for the loss of fish wealth for the fishing year 1998-99.

2. In the affidavit, filed in support of the writ petition, it is stated that the petitioner-Society has about 147 poor fishermen as members, and they eke out

their livelihood by growing and marketing the fish, fished out from Pedda Cheruvu, which has total water spread area of Ac.500-00. That, during 1998-99, the petitioner-Society released fish seed in Pedda Cheruvu, and the entire fish, weighing not less than 28 tons, died in the last week of November, 1998, because the untreated industrial effluents were discharged into Pedda Cheruvu by respondent Nos.7 to 14, which include paper mill, pharmaceutical unit, solvent oil mill, juice company, cotton and oil company etc. The petitioner-Society alleges that the aforementioned industries have violated the provisions of the Water (Prevention and Control of Pollution) Act, 1974 (for short "the Water Act").

3. After loss of fish wealth of the petitioner-Society, the Sub-Divisional Magistrate, in the month of November, 1998, initiated proceedings u/s 133 of the Code of Criminal Procedure, 1973 for removal of the nuisance. The respondent Nos.1 and 2 who are the authorities to enforce the Water Act have not taken any action against the erring units.

4. APPCB-responent No.1 filed report before this Court on 8-11-1999. Other respondents also filed counter-affidavits.

5. The report filed by the Environmental Engineer inter alia states that on noticing a press report on pollution of Pedda Cheruvu, he inspected the area on 10-11-1998, collected water samples from the lake and analysed the same, and that the analysis reports do not indicate any industrial pollution. The report shows the following details in respect of respondent Nos.7 to 14 in seriatum:

Sl. No.	Name of the Industry	Line of activity	Status
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1.

M/s. Sharma Paper Mills Ltd.,Kondamadugu

Kraft Paper 250Mt/ month

ETP System is existing (settling tanks). Treated water is recycled back. This industry was shut down due to an accident on 21-10-1997. This industry is not in regular operation, but operation of the industry was observed on the day of lake inspection. The waste water does not go outside the industry premises in normal course of operation.

2.

M/s. Pharmads Pharmaceutical Ltd., Kondamadugu

Formulations of drugs

Only washings of the containers is the source of waste water. The waste of less than 500 litres per day water does not go away from the industry premises.

3.

M/s. Anand Solves Ltd., Kondamadugu

Edible oil through solvent extraction process 30/day

No refinery is existing in the industry. The waste water is disposed into evaporation ponds. During heavy rains the water may go out but will not have significant impact on the environment as it is only the coolant water with slight contamination.

4.

M/S-Anand Agros Ltd., Kondamadugu.

Solvent extracted oil 100T/day Refined edible 20T/day

This industry is also having a refinery hut under shut down since 8 months due to market problems as informed by the management. Therefore, no significant impact.

5.

M/s.Chanda Laboratories Ltd.,Kondamadugu.

Small Scale Drug Industry (Niacinamide. Niacin).

Effluent is disposed into SEPs but not adequate especially in rainy season. This industry is not in regular operation. Notices issued to improve the FTP system and to obtain consents.

6.

M/s. REIL Products Industries Ltd. Kondamadugu.

Fruit & Pulp Concentrates

This industry is having a full fledged ETP and sufficient land for disposal of treated effluent. This is only a seasonal industry. This industry is not in operation and declared to be sick by BIFR as informed by the management.

7.

M/s. Makhariya Coltort & Oil Trading Co., Ltd., Kondamadugu.

Refined oil 25T/day.

This industry is having a full fledged ETP. The treated water is disposed for suppression of ash. This industry is not in regular operation due to market problems as informed by the management. In case of regular operation, the treated effluent may find its way outside the premises.

8.

M/s. Shakthi Super Grippers Ltd., Kondamadugu.

Nylon Zip Fasteners-1,3 million Mtrs/yr

This is closed.

6. The Environmental Engineer further states that on enquiry he found that a part of the fish grown, died in the tank, that the industries which exist in Kondamadugu Industrial Area are small scale industries and most of them are either sick or not regular in their operations, that all the water pollution potential industries, have set up effluent treatment systems, and that APPCB is taking legal action against the defaulting industries. Pedda Cheruvu is 2 to 3 Kms., away from the industrial area, and that the industries dispose of the effluent on land after treatment or into evaporation ponds, and no discharge is permitted into the natural drainage system, even though during rainy season some contamination of the run off water is possible. Inspections are being conducted from time to time and necessary directions issued to ensure compliance of the APPCB standards. He lastly states that it cannot conclusively be said that the death of fish is only due to industrial pollution, unless detailed investigation is done.

7. Respondent Nos.3 and 4 namely Regional Director and Assistant Director of Fisheries Department in their counter-affidavit have inter alia stated that the petitioner-society is taking Peddacheruvu on yearly lease basis and they are getting good yield of fish. It is also stated that respondent Nos.3 and 4 addressed to respondent No.1 about the problem of pollution in Peddacheruvu and no action has been taken by them.

8. Respondent Nos.7, 8, 9, 12 and 14 have not filed any counter-affidavit denying the allegations.

9. Respondent No.10 in the counter does not dispute the topographical location of Pedda Cheruvu, that the unit comes within the purview of the Water Act, and that it is obligatory on its part to install/take preventive measures for the arrest of ground water pollution and atmosphere. It is also stated that the unit is running only after obtaining No Objection Certificate from the APPCB, which has given its consent vide Lr.No.RON/ 733/92-290, dated 11-1-1993. That it has taken all precautionary measures and fulfilled all the conditions to prevent air and water pollution, and that the effluents discharged by it are used for the gardening in their factory premises. That it is the only unit in the area which has constructed a solar evaporation pond for recycling effluents for agricultural purpose. The allegations made against it are denied.

10. By a separate counter, respondent No.11 denied the allegation of discharge of effluents into surrounding area, or into the village nala or into Peddacheruvu. It is averred that respondent No. 11 has set up fulfilled effluent treatment process plant to treat the effluents that arise out of bulk drugs and intermediary drugs manufactured by it. That the mother liquor, the waste produce generated in the manufacture of drugs, is treated in sedimentation ponds, and after the treatment process it is let out into the solar evaporation ponds of the size of 35" x 29.4" so that the neutralised water gets evaporated. It is also averred that no

effluents, as alleged by the petitioner, are discharged into the Pedda Cheruvu, and that they have not violated the provisions of the Water Act.

11. Respondent No.13 in its counter states that its activity is to extract oils from soyabean and cotton seeds, and the nature of its does not give any scope of release of effluents, which are likely to result in the death of fish. It has not violated the terms and conditions of the certificate of the consent orders. It has set up water and effluent treatment plants, which include oil and grease separation tank, two equalisation tanks, two chemical dosing tanks, one neutralising tank, first and second aeration lagoons and sludge drain beds. The effluents discharged by it are treated following the aforementioned process, and that the waste water is used by it for plantation of the factory premises. The topography of the area does not permit the flow of the effluents into Pedda Cheruvu, and that the allegations made by the petitioner that respondent No.13 discharges untreated effluents into Pedda Cheruvu as a result whereof the fish died, is without any basis, and therefore, the writ petition be dismissed against it.

12. We have heard the learned Counsel for the petitioner and the learned Counsel for respondents at length.

13. Respondent Nos.10 and 11 have placed before us documents, including Consent Orders for operation of the plant under the Water Act and the Air Act to show that respondent No.1 has given NOC for setting up their units subject to certain conditions. Respondent No. 1 while issuing NOC to respondent Nos.10 and 11, directed them to fulfil inter alia the following conditions: The applicant shall make an application for grant of fresh consent atleast 30 days before the date of expiry of this consent.

1. The quantity of the effluent discharged shall not exceed the figures mentioned.
2. The applicant shall submit flow sheet and particulars of proposed treatment and disposal system and a time schedule for completing the treatment plant for treating the trade effluent as well as domestic sewage from the factory and colony so as to reach the Board by.
3. Necessary fee, as prescribed for obtaining consent, shall be paid for by the applicant alongwith the consent application.
4. The industry would immediately submit the revised application for consent to this Board in the event of any change in the trade effluent raw material used and processes employed.
5. The applicant shall not change or alter either the quality or the quantity or the rate of the discharge or temperature or the route of discharge without the previous written permission of the Board.
6. The effluent discharged shall not contain constituents in excess of the tolerance limits as laid down.

14. Similar conditions were laid down in the consent order issued under the Air

Act.

15. NOC was also removed from time to time. The last one being Consent Order No.26150/PCB/W/98, dated 2-11-1998.

16. It may be noticed that APPCB while issuing consent is imposing some terms and conditions, and in case the industry changes or alters the quality or quantity or rate of discharge or route of the discharge without the previous written permission of the Board, the same would amount to violation of the conditions of consent u/s 25 of the Water Act as well as Section 21 of the Air Act. According to the report filed before us, Kondamadugu Industrial Area is at a distance of about 2 to 3 Km., from Pedda Cheruvu. It is also stated that the industries are disposing of the effluents on land after treatment and/ or releasing into the evaporation ponds, though no discharge is being allowed in the natural drainage system. Apart from this, the letter 1-1-1999 addressed by the Environmental Engineer, Nalgonda to the Joint Chief Environmental Engineer is also placed on record. The said letter gives the following details.

17. Respondent No.7 which is manufacturing craft paper has constructed tanks to collect waste water from pulp land, and that the industry is recycling the waste water. It is also stated that if the industry does not recycle the waste water continuously there are chances of overflow of water from settling tanks, which may lead to Bibinagar. Respondent No.7 has not obtained consent from respondent No.1 though the industry produces 1 KL of effluents. They only put effluents in centrifugal machines and collect mother liquor in STPs drums. The industry also has evaporation tanks, and at the time of inspection there was no overflow. The letter in question while dealing with respondent No.8 states that the industry has no effluent treatment plant, and there is possibility of ground water pollution as the industry has constructed only collection tank at ground level. There is also possibility of discharge of effluents during rainy season. Insofar as other industries are concerned, the Environmental Engineer also opined that during rainy season if all the industries are in operation, there is possibility of treated effluent finding its way outside the premises of the factories and may flow into fishing lake through natural nata.

18. A reading of the letter addressed by the Environmental Engineer, Nalgonda, as well as the report filed by this Court leads to a reasonable inference that there is possibility of effluents getting discharged into Pedda Cheruvu. Apart from that, none of the industries have fool proof effluent treatment plants, and therefore, the toxic substances and effluents percolating into acquifiers, and thereafter, to Bibinagar lake at a distance of 2 to 3 Km., from the industries cannot be ruled out. The apprehension of the petitioner-society that the entire fish in the Bibinagar tank died due to industrial poisoning, cannot be said to be baseless.

19. The fishing rights in Pedda Cheruvu tank are being leased out by Fisheries Department duly following the procedure contemplated under various executive instructions. There is no doubt that it is a public tank, under the control of the

Gram Panchayat as well as the Fisheries Department. The industries, therefore, have no right to discharge the industrial effluents either directly or indirectly, whether treated or untreated into Pedda Cheruvu tank.

20. It is necessary to refer to Rule 3(3A) of the Environment (Protection) Rules, 1996 promulgated by the Central Government in exercise of power under Sections 6 and 25 of the Environment (Protection) Act, 1986. As per Rule 3(3A), if the standards for discharge of effluents are not prescribed u/s 3(1) and (2) the standards in Schedule VI are applicable. As per Schedule VI, all the treated effluents when they are discharged into a surface water source have to conform to the standards mentioned therein. On this aspect, the report submitted to this Court is silent, though it is mentioned that further investigations are required. Further, though, it is refuted by the learned Counsel for the respondents, some of the industries appear to have been working without proper consent order from respondent No. 1.

21. The scope of judicial review in Environmental litigation has its own features and characteristics. Indeed in *Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others*, , the Supreme Court observed:

When the Court is called upon to give effect to the doctrine of Directive Principles and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least the Court may do so is to examine whether appropriate considerations are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case. The Court may always give necessary directions. However, the Court will not attempt to nicely balance relevant considerations.

22. Urban problems like sanitation, solid waste management, public places (parks and pavements), town planning raised serious questions of public law. After examining the questions brought before them in *Forward Construction Co. and Others Vs. Prabhat Mandal (Regd.)*, *Andheri and Others*, , *Shri Sachidanand Pandey (supra)*, and *Pratibha Co-operative Housing Society Ltd. and another Vs. State of Maharashtra and others*, , the Supreme Court allowed developmental activities, taking a broader view of the matter brought before it.

23. A Division Bench of Bombay High Court in *Bombay Environment Action Group and Another Vs. State of Maharashtra and Others*, , observed as under:

Environmental issues are relevant and deserves serious consideration. But the needs of the environment require to be balanced with the needs of the community at large and the needs of a developing country. If one finds, as in the case, that all possible environmental safeguards have been taken, the check and control by way of judicial review should then come to an end. Once an elaborate and extensive exercise by all concerned including the environmentalists, the State and the Central authorities and expert-bodies is undertaken and effected and its end result judicially considered and reviewed, the matter thereafter

should in all fairness stand concluded. Endless arguments, endless review and endless litigation in a matter such as this, can carry one to no end and may as well turn counter productive. While public interest litigation is a welcome development, there are nevertheless limits beyond which it may as well cease to be in public interest any further.

24. The principle laid down is to the effect that once elaborate and extensive exercise by all the concerned State and Central authorities expert bodies etc., is undertaken the Court's review of the decision should be limited. The said view was affirmed by the Supreme Court in *Dahanu Taluka Environment Protection Group and Another Vs. Bombay Suburban Electricity Supply Company Ltd. and Others*, , when it observed as under:

It is sufficient to observe that it is primarily for the Governments concerned to consider the importance of public projects for the betterment of the conditions of living of the people on the one hand and the necessity for preservation of social and ecological balances, avoidance of deforestation and maintenance of purity of the atmosphere and water free from pollution on the other in the light of the various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a just balance between these two conflicting objectives. The Court's role is restricted to examine whether the Government has taken into account all relevant aspects and has neither ignored nor overlooked any material considerations nor been influenced by extraneous or immaterial considerations in arriving at its final decision.

25. Court has no expertise in large areas of Governmental activity which involves technical and scientific knowledge. Therefore the judicially evolved theory of limited review has justification.

26. In *Vincent v. Union of India* , the Supreme Court was dealing with a writ petition under Article 32 of the Constitution of India in which a direction was sought to ban import, manufacture, sale and distribution of certain drugs. The Supreme Court observed as under:

Having regard to the magnitude, complexity and technical nature of the enquiry involved in the matter and keeping in view the far reaching implications of the total ban of certain medicines for which the petitioner has prayed, we must at the outset clearly indicate that a judicial proceeding of the nature initiated is not an appropriate one for determination of such matters. There is perhaps force in the contention of the petitioner that the Hathi Committee too was not one which could be considered as an authoritative body competent to reach definite conclusions. No adverse opinion can, therefore, be framed against the Central Government for not acting upto its recommendations.

27. The above view was reiterated in *Shivarao Shantaram Wagle and Others (II) Vs. Union of India and Ors*, , which is a case dealing with the question of release of imported Irish butter.

28. In the background of the facts, we must consider the scope of power of the Court in such matter having regard to the importance of the lakes, other water bodies and surface water sources.

29. In *People United for Better Living in Calcutta-Public and another Vs. State of West Bengal and others*, , the ecological importance of maintenance of wetlands in the Eastern fringe of the city of Calcutta, was considered. The petitioner challenged the reclamation of wetlands for economic activity. Quoting extensively from authoritative textbooks on the use of wetlands, Justice U.C. Banerjee (as he then was) observed:

Wetland acts as a benefactor to the society and there cannot be any manner of doubt in regard thereto and as such encroachment thereof would be detrimental to the society which the Law Courts cannot permit. This benefit to the society cannot be weighed on mathematical nicety so as to take note of the requirement of the society - what is required today may not be a relevant consideration in the immediate future, therefore, it cannot really be assessed to what amount of nature's bounty is required for the proper maintenance of environmental equilibrium. It cannot be measured in terms of requirement and as such, the Court of Law cannot, in fact, decry the opinion of the environmentalist in that direction. Law Courts exists for the benefit of the society - Law Courts exists for the purpose of giving redress to the society when called for and it must rise above all levels so that justice is meted out and the society thrives thereunder.

30. The judgment in *Public (supra)* was cited with approval in *M.C. Mehta Vs. Union of India and Others* M/s. Delhi Development Authority, .

31. In *Dr. Ajay Singh Rawat Vs. Union of India (UOI) and Others*, , a member of Nainital Bachao Samithi approached the Supreme Court under Article 32 of the Constitution seeking directions as would prevent further pollution of already suffocating Nainital. It was inter alia contended that Nainital lake is polluted because of both inorganic and organic causes. The nearby minerals, namely, manganese, lead, salts, copper, cobalt and zinc make the lake toxic for life forms. The discharge of waste water also pollutes the lake. But the most potent source of pollution is human faeces from leaking sewers. Throwing of plastic bags and dumping of other materials have added to the lakes pollution. The Supreme Court requested the District Judge, Nainital to appoint an Advocate-Commissioner to examine the construction activity and other factors causing pollution. Accordingly a report was submitted. After considering the report as well as recommendations of the Commissioner, the Supreme Court directed the following steps to be taken urgently.

1. Sewage water has to be prevented at any cost from entering the lake.

2. So far as the drains which ultimately fall in the lake are concerned, it has to be seen that building materials are not allowed to be heaped on the drains to prevent siltation of the lake.

3. Care has been taken to see that horse dung does not reach the lake. If for this purpose the horse-stand has to be shifted somewhere, the same would be done. The authorities would examine whether trotting of horses around the lake is also required to be prevented.

32. In *M.C. Mehta Vs. Union of India and others*, , the Supreme Court considered the question of sustainable development in the vicinity of the lakes. An environmental lawyer filed a writ petition under Article 32 of the Constitution seeking a direction to Haryana Pollution Control Board to control the pollution caused by stone crushers, mine operators so as to preserve environment within a radius of 5 kms., from the tourist resorts of Badkhal lake and Surajkund lake. Initially, the Supreme Court directed Haryana Board to inspect and ascertain the impact of mining on the ecologically sensitive area of Badkhal and Surajkund lakes. A team of Board comprising scientists inspected the area and submitted a report. The Committee recommended to prepare environmental management plan and also to stop mining activities within the radius of 5 Kms., from Badkhal and Surajkund tourist places. Placing reliance on the report, the Supreme Court observed as under:

The two expert opinions on the record -by the Central Pollution Control Board and by the NEERI- leave no doubt on our mind that the large-scale construction activity in the close vicinity of the two lakes is bound to cause adverse impact on the local ecology. NEERI has recommended green belt at one km., radius all around the two lakes. Annexures A and B, however, show that the area within the green belt is much lesser than one km., radius as suggested by the NEERI.

33. On the above premise the Supreme Court inter alia directed that there shall be no mining activity within 2 Kms., radius on the tourist resorts of Badkhal and Surajkund lakes and that no construction of any type shall be permitted within 2 Kms., radius and that all open areas shall be converted into green belts. The Municipal Corporation of Faridabad and other builders filed petitions for modification of the orders. In *M.C. Mehta Vs. Union of India (UOI) and Others*, , the Supreme Court considered the various questions raised by the Municipal Corporation and other builders. It was submitted by the Municipal Corporation, Faridabad that in prohibited area of 5 Kms., plots were allotted and development schemes were sanctioned on the strength of which plot holders had started construction and if it is stopped vested rights of several persons would be adversely affected causing huge financial loss. It was also contended by the builders that prohibition of construction activity within radius of 2 Kms., would amount to discrimination violating Article 14 of the Constitution as similar developmental activities were not prohibited in respect of other lakes in the country. This was rejected by the Supreme Court observing :

The functioning of ecosystems and status of environment cannot be the same in the country. Preventive measures have to be taken keeping in view the carrying capacity of the ecosystems operating in the environmental surroundings under consideration. Badkhal and Surajkund lakes are popular tourist resorts almost

next door to the capital city of Delhi. The natural drainage pattern of the surrounding hill areas feed these water bodies during rainy season. Large scale construction in the vicinity of these tourist resorts may disturb the rain water drains which in turn may badly affect the water level as well as the water quality of these water bodies. It may also cause disturbance to the aquifers which are the source of ground water. The hydrology of the area may also be disturbed.

34. The Supreme Court also clarified the order passed earlier directing that all types of constructions relating to all types of plots in the area from 1 Km., to 5 Km., radius of Badkhal and Surajkund lakes shall have prior approval of Central Pollution Control Board and Haryana Pollution Control Board.

35. In Vellore Citizens Welfare Forum Vs. Union of India and others, , the Supreme Court accepted the concept of "sustainable development" as part of Indian Environmental Law. It was observed:

The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs",

36. In M.C. Mehta v. Union of India (Taj Mahal case) (1997) 2 SCC 353, the petitioner complained that Taj Mahal is suffering decay due to large number of industries like foundries, chemical industries, Madhura Refinery etc., and sought appropriate directions to the authorities to take immediate steps to stop air pollution in Taj Trapezium). After considering the various reports, the Supreme Court went on issuing directions and also ordered relocation of large number of industries. Finally, the Supreme Court permitted those industries subject to availing gas connections from Gas Authority of India Limited. The Court also gave various directions and observed as under:

The Taj, apart from being a cultural heritage, is an industry by itself. More than two million tourists visit the Taj every year. It is a source of revenue for the country. This Court has monitored this petition for over three years with the sole object of preserving and protecting the Taj from deterioration and damage due to atmospheric and environmental pollution. It cannot be disputed that the use of coke/coal by the industries emits pollution in the ambient air. The objective behind this litigation is to stop the pollution while encouraging development of industry. The old concept that development and ecology cannot go together is no longer acceptable. Sustainable development is the answer. The development of industry is essential for the economy of the country, but at the same time the

environment and the ecosystems have to be protected. The pollution created as a consequence of development must be commensurate with the carrying capacity of our ecosystems.

37. We may also refer to Consumer Education and Research Society Vs. Union of India and Others, , wherein it was laid down as under:

.....Therefore, if an attempt is made by the State Legislature and the State Government to balance the need of the environment and the need of economic development it would not be proper to apply the principles of Prohibition in such a case. The reports of the three Committees only point out the ecological importance of the area and express an apprehension, that any major mining operation within the notified area and large scale industrialisation near about the sanctuary as originally notified, may adversely affect the ecological balance and bio-diversity of that area. It would, therefore, be proper and safer to apply the "Principle of Protection" and the "Principal of Polluter Pays" keeping in mind the principle of "sustainable development" and the principle of inter-generation equity".

38. Having examined this case in the light of the principles laid down by various judgments of the Apex Court referred herein above, we are of the opinion that the petitioner has not laid any factual foundation to definitely arrive at a conclusion that fish in Pedda Cheruvu died in 1998 only due to alleged release of untreated effluents in Pedda Cheruvu tank. The other aspect of the matter is the Environmental Engineers of respondent No.1 themselves gave reports that during rainy season there is possibility of effluents escaping from the premises of the factories, and through nala entering Pedda Cheruvu. Therefore, it is a case where further examination and tests are required to be made. In fact the officers of the APPCB have also emphasised the fact that there is a possibility, especially in rainy season, of effluents getting out of various factory premises ultimately reaching Pedda Cheruvu. But having regard to the fact that big or small, all the industries do not have foolproof effluent treatment plants, which result in discharge of effluents outside their factories ultimately leading to tanks like Pedda Cheruvu is common phenomenon. Having regard to these we dispose of the writ petition in the following terms:

"1. We direct respondent No.1 to immediately conduct Environment Management Study/Environment Impact Study with reference to Pedda Cheruvu of Bibinagar and take all necessary steps to avoid further damage to Pedda Cheruvu;

2. The District Collector, Nalgonda is directed to conduct enquiry into the cause of death of fish in Pedda Cheruvu and if the enquiry reveals that any of the respondents Nos.7 to 14 or other industries in Kondamadugu Industrial Area are responsible for abnormal, if any, values of various parameters of the lake ecology, the District Collector may fix proportionate liability on respondent Nos.7 to 14 for payment of damages to the petitioner for the loss caused due to pollution;

3. The District Collector is at liberty to seek any clarification from this Court while implementing the direction (2) above;
4. Respondent No.1 is also directed to constantly monitor the release of treated/untreated effluents from various industries, including respondent Nos.7 to 14 situated in Kondamadugu Industrial Area and other surrounding areas so that the ecology of Pedda Cheruvu is maintained at sustainable level; and
5. We also direct that no further licences for establishment of chemical or chemical based industries near Pedda Cheruvu or within a distance of 5 Km., from the said tank, shall be given."